



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2016-0799]**

**RIN 1625-AA87**

**Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the security zone surrounding the bridge between Liberty State Park and Ellis Island in order to increase navigational safety in New York Harbor. This security zone modification would allow certain vessels to transit underneath the bridge, reducing congestion in the adjacent Anchorage Channel. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0799 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST1 Kristina Pundt, Waterways Management at U.S. Coast Guard Sector New York, telephone 718-354-4352, email Kristina.H.Pundt@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
ANPRM	Advance notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background, Purpose, and Legal Basis**

On November 27, 2002, the Coast Guard published a NPRM entitled, “Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone” in the *Federal Register* (67 FR 70892). The NPRM proposed to establish a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island. We received no comments on the proposed rule. No public hearing was requested and none was held. The current 150-yard permanent security zone around the bridge between Liberty State Park and Ellis Island became effective in January 2003 as enacted by a final rule entitled, “Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone” published in the *Federal Register* (68 FR 2886, January 22, 2003).

On May 6, 2008, the Coast Guard published a NPRM entitled, “Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port” in the

*Federal Register* (73 FR 24889). The NPRM proposed to modify several aspects of the permanent safety and security zone regulations within the New York Captain of the Port Zone. We received 15 comments regarding the proposed rule. A public meeting was requested to discuss the proposed expansion of the Liberty and Ellis Island security zone to include all waters within 400 yards of these two islands and the bridge between Liberty State Park and Ellis Island. On February 12, 2009, the Coast Guard published a final rule entitled, “Safety and Security Zones New York Marine Inspection Zone and Captain of the Port Zone” in the *Federal Register* (74 FR 7184). However, based on the comments received, the Coast Guard did not expand the Liberty and Ellis Island security zone. As a result, a public meeting was unnecessary and the security zone remained 150 yards.

On November 3, 2016, the Coast Guard published an ANPRM entitled, “Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone” in the *Federal Register* (81 FR 76545). The ANPRM solicited public comments on a potential rulemaking to modify the existing security zone around the bridge between Liberty State Park and Ellis Island. We received 125 comments regarding the advance notice of proposed rulemaking. Out of the 125 comments received, 123 comments were in support of modifying the existing security zone around the bridge between Liberty State Park and Ellis Island, almost all of which emphasized improving navigation safety. The opposed comment, provided by the National Park Service, expressed security concerns regarding Ellis and Liberty Islands due to their historical symbolism. The singular neutral comment received was unclear as to the commenter’s view on the proposed security zone modification. The comment addressed the federal job hiring process and stated that all security zones should be eliminated, both of which are outside the purview of this

rulemaking.

The purpose of this rulemaking is to modify the existing security zone to allow certain vessels to transit underneath the bridge between Liberty State Park and Ellis Island. This security zone modification will increase the navigational safety within New York Harbor by reducing congestion in the adjacent Anchorage Channel. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to modify the existing security zone around Liberty Island and Ellis Island and the bridge between Ellis Island and Liberty State Park. This does not relinquish the COTP authority to enforce the full 150 yard security zone around the bridge. Rather, the modification would allow certain vessels to transit underneath the Ellis Island Bridge on weekends and Federally Observed Holidays, beginning on Memorial Day Weekend through October 1, between one hour after sunrise and one hour before sunset. Vessels making this transit a) must be able to safely navigate underneath the bridge, b) be human powered watercraft and c) meet the horizontal and vertical navigational bridge clearances. The proposed regulatory text appears at the end of this document.

### **IV. Regulatory Analyses**

The Coast Guard developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below is a summary of our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the proposed modification and will allow greater access to a previously restricted area. Prior to the establishment of the security zone in 2003, small watercraft routinely transited underneath the Ellis Island Bridge. Since the enactment of the 2003 security zone, these craft have been diverted into the busy navigation channel east of Ellis Island. Although the current regulation allows vessels to transit under the Ellis Island Bridge with COTP permission, this modification grants standing COTP approval for certain vessels to transit underneath the bridge during specific time periods. Thus, this modification would lessen the regulatory burden on these vessels by allowing transit through the security zone without needing to seek prior COTP permission. Moreover, the Coast Guard would make the boating public aware of this modification through publication in the Local Notice to Mariners.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of

a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the modification of a security zone surrounding the bridge between Liberty State Park and Ellis Island. Normally such actions are categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using

<http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. In § 165.169, revise paragraph (a)(4) to read as follows:

#### **§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.**

(a) \* \* \*

(4) *Liberty and Ellis Islands.* (i) *Location.* All waters within 150 yards of Liberty Island and Ellis Island, and the Ellis Island Bridge.

(ii) *Ellis Island Bridge.* Vessels may transit underneath the Ellis Island Bridge, subject to the following conditions:

(A) *Dates/Times:* On weekends only, to include Federally Observed Holidays on a Friday or Monday, from Memorial Day Weekend through October 1 each year, between one hour after sunrise and one hour before sunset.

(B) *Vessel types:* Human powered vessels with a maximum length of sixteen feet. Human powered vessels must be able to safely navigate under the bridge.

(C) *Notification:* Human powered vessels desiring to transit shall contact the United States Park Police Command Center at 212-363-3260 regarding intentions of passage prior to entering the security zone and transiting under the Ellis Island Bridge.

(D) *Route:* Transits through the security zone and under the bridge shall occur only at the designated route marked with lights and signage.

(E) *Passage:* Vessels transiting under the Ellis Island Bridge shall make expeditious passage and not stop or loiter within the security zone.

(iii) *Enforcement period.* The security zone described in this subsection is effective at all times. Although certain vessels have permission to enter the security zone to transit under the Ellis Island Bridge subject to the conditions outlined in the preceding paragraphs (ii)(A)-(E), the security zone is in effect permanently and can be enforced at any time. When deemed necessary the COTP may rescind the permission granted in the preceding paragraphs (ii)(A)-(E) for any period of time.

\* \* \* \* \*

Dated: April 2, 2018.

**M. H. Day,**

*CAPTAIN, U.S. Coast Guard,*

*Captain of the Port New York.*

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